

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.754 OF 2005
IN
NOTICE OF MOTION NO. OF 2005
IN
S.C.SUIT NO.1710 OF 2005

Deepak N. Parekh Appellant
vs.
M/s.Crative Corporation & ors. Respondents

Mr.A.Y.Sakhare with Mrs.Vishakha Waswani
i/b.M/s.V.V.Juris for the appellant.

Mr.Anil Singh with Mr.D.R.Shah for the respondent no.1.

Mr.R.A.Malandkar for the respondent no.2.

Mr.S.S.Shah for the respondent no.3.

CORAM : B.H. MARLAPALLE,J.

DATED : 6th September 2005

P.C.

Heard Mr.A.Y.Sakhare, the Ld. senior counsel for
the appellant-plaintiff, Mr.Anil Singh, the learned
counsel for the respondent no.1, Mr.R.A.Malandkar, the
learned counsel for the respondent no.2 and Mr.S.S.Shah,
the learned counsel for the respondent no.3.

2. This appeal arises from the order dated 4.5.2005
passed by the learned Judge of the City Civil Court,
Mumbai rejecting the prayer for ad-interim injunction.

By the said order, the draft Notice of Motion has been directed to be registered and it was made returnable on 1.7.2005.

3. The plaintiff has filed S.C. Suit no.1710/2005 on 4.4.2005 and during its pendency, the respondent no.2-Corporation granted tentative approval to the suit building plans on 3.5.2005 and on the very next day the prayer for ad-interim relief was turned down on the ground that the prayers did not survive any further. In the Notice of Motion, there were two prayers which are reproduced hereinbelow:

(a) pending of the suit, this Hon'ble Court may be pleased to restrain the Defendant No.1 either by themselves or through their agents, servants or employees from carrying out any further construction activity in respect of the Shankar Mahal Co-operative Housing Society situated at 8, Dadabhai Road, Vile Parle (West), Mumbai 400 056 except in accordance with the plan annexed at Annexure "D" to the said Agreement dated 2/7/2002.

(b) pending of the suit, this Hon'ble Court may be pleased to restrain Defendant no.2 from approving the said amended plan submitted by Defendant No.1 pursuant to the approval of the Shankar Mahal Society dated 19/3//2005.

4. Obviously, prayer (b) became infructuous when the impugned order was passed and so far as prayer (a) is concerned, it was stated by the defendant no.1 that the

construction was nearing completion as per the tentative plans approved and, therefore, there was no reason to issue any order of temporary injunction in respect of the construction. Mr.Singh now states that the building construction is completed and the additional tenements are ready for allotment to third parties in whose favour rights have already been created.

5. The main grievance of the plaintiff is regarding the change in the lay out plan. He contends that Annexure "D" to the agreement dated 2.7.2002 indicated the correct and promised lay out of the plaintiff's flat indicating additions to be made therein. But the construction already undertaken and alleged to be approved by the respondent has changed the lay out plan and where the plaintiff was promised an additional bed room, balcony is proposed and thus he has lost on the utility area.

6. In any case the notice of motion is still pending with the trial Court and the same is required to be decided on its own merits. At the same time, the plaintiff is not precluded from taking out a fresh notice of motion for appropriate reliefs in view of the progress in the construction of the building. The plaintiff has complained that the installation of lift has also caused him inconvenience and the lift facility

is available only to the tenements on the added floors i.e. floor nos.. 5 to 7. All these issues can be appropriately considered by the trial Court on a fresh notice of motion, if so advised to be taken out.

7. The appeal is, therefore, disposed of with a direction to hear and decide the pending notice of motion as expeditiously as possible and in any case by 30th November 2005 and in the meanwhile any fresh occupants of the additional tenements shall be given a notice by the defendant no.1 regarding the pendency of the suit.

8. Civil Application does not survive.

(B.H. MARLAPALLE,J.)